

SO ORDERED.

The Court's complete ruling, findings and conclusions will be reflected in a transcript of the hearing.



Dated: May 01, 2006

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A handwritten signature of George B. Nielsen, Jr. is written over a horizontal line.

GEORGE B. NIELSEN, JR
U.S. Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:

RICHARD LOUIS MAZZACONE and
KATE MICHELLE MAZZACONE,

Debtors.

In Proceedings Under
Chapter 7

Case No: 03-13467-PHX-GBN

Adversary No. 04-00592

GINA LAW and LO MAN LAW and LAI
LING LAW, husband and wife and DAVID
LAW,

Plaintiffs,

v.

RICHARD LOUIS MAZZACONE and
KATE MICHELLE MAZZACONE,

Defendants.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT**

This matter having come before the Court for trial on June 24, 2005, as thereafter continued from time-to-time and for Oral Argument on November 29, 2005, and the Plaintiffs appearing at all proceedings herein by their Attorney Robert M. Back of the Law Office of Robert M. Back, P.C., and the Defendants having appeared without an attorney and on their own behalves at the hearing on June 24, 2005, and Defendant Richard Louis Mazzacone appearing at the hearing on September 2, 2005, and the Defendants having made no appearance at Oral

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Argument on November 29, 2005; and

The Court having given due consideration to the testimony and evidence presented and to the statements and arguments of Plaintiffs' counsel and of the Defendants, and upon the entire record herein; and

The Court having entered its Findings of Fact and Conclusions of Law on the record pursuant to Federal Rule of Bankruptcy Procedure 7052 adopting by reference Federal Rule of Civil Procedure 52,

NOW, THEREFORE, the Court hereby issues the following Findings of Fact, Conclusions of Law and Order for Judgment in conformity thereto:

FINDINGS OF FACT

1. Plaintiffs Lo Man Law and Lai Ling Law are husband and wife, adult residents of the State of Arizona.

2. Plaintiff Gina Law, is the adult daughter of Plaintiffs Lo Man Law and Lai Ling Law and is also a resident of the State of Arizona.

3. Plaintiff David Law is the adult son of Plaintiffs Lo Man Law and Lai Ling Law and is also a resident of the State of Arizona.

4. Defendants Richard Louis Mazzacone and Kate Michelle Mazzacone are husband and wife, adult residents of the State of Arizona and filed a Voluntary Petition for Relief under Chapter 7 of the United States Bankruptcy Code on July 31, 2003.

5. On May 27, 2002, at approximately 8:40 p.m., Plaintiff Lo Man Law was driving a 1994 Jeep Grand Cherokee northbound on 75th Avenue approaching the intersection of West Deer Valley Road and 75th Avenue in Glendale, Arizona. Plaintiffs Lai Ling Law, Gina Law and David Law were his passengers. At said time and place, another vehicle, a 1998 Nissan Altima was northbound directly behind Plaintiffs. At said time and place, Defendant Richard Mazzacone was driving a 1993 Chevrolet pick-up truck northbound on 75th Avenue as well.

6. Plaintiffs' automobile stopped for a red traffic signal in the left turn lane at the intersection. The Nissan vehicle stopped behind the Plaintiffs' Jeep. Defendant Richard Mazzacone failed to stop, and he collided with the Nissan, which then propelled the Nissan into

1 the Plaintiffs' Jeep.

2 7. Defendant Richard Mazzacone was driving under the influence of alcohol at the
3 time of the collision.

4 8. Defendant Richard Mazzacone's negligence, recklessness and carelessness caused
5 his vehicle to strike the vehicle behind Plaintiffs' vehicle, which then collided with the Plaintiffs'
6 vehicle.

7 9. Defendant Richard Mazzacone failed to keep his truck properly under control
8 when approaching the red stop light and failed to control the speed of his truck to a safe level
9 under the circumstances, because he was driving while under the influence of alcohol.

10 10. Plaintiffs have incurred damages arising from the injuries sustained in this
11 collision as a result of Defendant Richard Mazzacone's negligence.

12 11. Defendant Richard Mazzacone's operation of a motor vehicle under the
13 circumstances was unlawful because he was intoxicated from using alcohol or other substances.

14 12. As a result of Defendant Richard Mazzacone's actions, Plaintiffs have been
15 damaged in an amount to be proven at trial.

16 13. The acts and omissions of Defendant Richard Mazzacone which caused Plaintiffs'
17 injuries and damages were performed pursuant to and on behalf of Defendants' marital
18 community.

19 CONCLUSIONS OF LAW

20 14. 11 U.S.C. §523(a)(9) excepts from discharge any debt "for death or personal injury
21 caused by the debtor's operation of a motor vehicle if such operation was unlawful because the
22 debtor was intoxicated from using alcohol, a drug, or other substance."

23 15. When determining whether a debtor was unlawfully operating a vehicle while
24 intoxicated for purposes of Section 523(a)(9), the Bankruptcy Court applies State substantive law,
25 pursuant to the 8th Circuit Bankruptcy Appellate Panel's decision in *In re Barnes*, 266 B.R. 397,
26 see discussion at pages 402-403.

27 16. Applying Arizona law under ARS 28-1381(a), it is unlawful to drive or be in
28 physical control of a vehicle under any of the following circumstances: One, while under the

1 influence of intoxicating liquor, any drug, a vapor, substance containing a toxic substance, or any
2 combination of liquor, drugs, or vapor if the person is impaired to the slightest degree; Two, if the
3 person has a blood alcohol concentration of .08 or more within two hours of driving or being in
4 actual physical control of the vehicle.

5 17. Defendant Richard Mazzacone violated both these alternatives or circumstances in
6 this case, although only one need be proven to make the conduct unlawful.

7 18. The actions of Defendant Richard Mazzacone justify an Order from this Court
8 declaring that the debt owed by Defendants to the Plaintiffs is non-dischargeable as to Defendant
9 Richard Mazzacone pursuant to 11 U.S.C § 523(a)(9).

10 19. Pursuant to the 9th Circuit Bankruptcy Appellate Panel's decision in In re
11 Tsurukawa, 258 B.R. 192, at page 195, the actions of Defendant Kate Michelle Mazzacone do not
12 justify an Order from this Court declaring that the debt owed by Defendants to the Plaintiffs is
13 non-dischargeable as to Defendant Kate Michelle Mazzacone pursuant to 11 U.S.C § 523(a)(9).

14 20. Pursuant to the 9th Circuit Bankruptcy Appellate Panel's decisions in In re
15 Maready, 122 B.R. 378, In re Lesueur, 53 B.R. 414, at page 416, and In re Soderling, 998 F.2d
16 730, at page 733, and pursuant to 11 U.S.C §§ 541(a)(2) and 101(7), the acts and omissions of the
17 Defendants which caused Plaintiffs' injuries and damages justify an Order from this Court
18 declaring that the debt owed by Defendants to the Plaintiffs is non-dischargeable as to the
19 Defendants' marital community pursuant to 11 U.S.C § 523(a)(9).

20 21. Pursuant to Federal Rule of Bankruptcy Procedure 7054, adopting by reference
21 Federal Rule of Civil Procedure 54, Plaintiffs shall be allowed costs.

22 ORDER FOR JUDGMENT

23 Based on the foregoing Findings of Fact and Conclusions of Law,

24 **IT IS HEREBY ORDERED, LET JUDGMENT BE ENTERED ACCORDINGLY.**

25 DATED this ____ day of April, 2006.

26
27 _____
Honorable George B. Nielsen, Jr.
United States Bankruptcy Judge